

Exhibit Q

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1 UNITED STATES DISTRICT COURT
1 SOUTHERN DISTRICT OF NEW YORK

2 -----x

3 In Re: TERRORIST ATTACKS ON
3 SEPTEMBER 11, 2001

03 MDL 1570 (GBD)

4 -----x

New York, N.Y.
November 16, 2011
2:30 p.m.

7 Before:

8 HON. FRANK MAAS

Magistrate Judge

11 APPEARANCES

12 KREINDLER & KREINDLER LLP
13 Attorneys for Ashton Plaintiffs
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16 Attorneys for Plaintiff Federal Insurance
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19 Attorneys for Burnett Plaintiffs
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21 Attorneys for O'Neill Plaintiffs
22 BY: JERRY S. GOLDMAN

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24 Attorneys for Defendants Al Haramain Islamic Foundation
24 and Perouz Seda Ghaty
25 BY: ALAN R. KABAT

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25 THE COURT: It's a little hard to understand, if some
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1 of these organizations have a thousand or thousands of
2 employees, how 12,000 pages, even if it's all financial
3 records, would be all the financial records, quarterly, etc.,
4 that relate to all of these branches for a multiyear period.
5 Are you representing that in response to this first category
6 somebody, Mr. al-Radhi or somebody else, on behalf of IIRO
7 queried every branch office to secure the documents that
8 plaintiffs have requested?

9 MR. McMAHON: Your Honor, I believe that's the case.
10 I will have to go back and check his affidavit. As I said at
11 page 13 paragraph 5, these documents were apparently sent to
12 counsel's office.

13 THE COURT: Just to avoid the game of chicken, I'm
14 going to direct that you provide that CD to plaintiffs' counsel
15 and also that plaintiffs' counsel review it.

16 MR. McMAHON: There are 12 CD's.

17 THE COURT: Like I said, the 12 CD's. I don't want to
18 leave anybody in suspense. It's not my intent at the end of
19 today to grant or recommend -- I think it would be a grant,
20 since this is a discovery issue -- dispositive relief in terms
21 of something like striking the answer of any of these
22 defendants. But I do think, unless I'm convinced otherwise, we
23 may be heading in that direction.

24 MR. McMAHON: Does your Honor have a viewpoint on the
25 bank documents we have, which are difficult to read? I asked

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1 Mr. Cater to send somebody down here to look at these. We
2 inquired of the bank about a digital format, but that may be
3 months away. I simply suggest to send somebody down to look at
4 the bank records.

5 THE COURT: I didn't go back through prior
6 transcripts, but I thought that there was a representation at
7 some prior session that there was no digital version of this.
8 Maybe the representation was just that there was no digital
9 file at these defendants' offices.

10 MR. McMAHON: I think at that time, your Honor, we
11 didn't have total definition on this issue. But subsequently,
12 in conference with the bank of Mr. al-Radhi, we discovered that
13 there is a hardcopy, and if they are to have access to the
14 digital records, that would take an enormous amount of time. I
15 know I referenced that somewhere that that is something that is
16 still --

17 THE COURT: You say it would take I guess it was at
18 least six months. One of the things that plaintiffs pointed
19 out was the letter request seeking these documents, I guess
20 from just one bank, was dated August 15th, which hardly
21 suggests that the defendants are proceeding with dispatch.

22 MR. McMAHON: Your Honor, I addressed this in point 4
23 on page 13, right before 5. I just want to know what to do
24 with these records, because we do have them. I want you to
25 know that I made the offer to come and visit and see if they

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1 can read these banking records if they so terribly want them.
2 I can't be more definite on what is in here regarding any
3 digital version.

4 MR. CARTER: Your Honor, my recollection of this is
5 that we were initially told that this was an old dot matrix
6 printout of some banking records and that there were no digital
7 files that could ever be identified. When we interviewed Mr.
8 al-Radhi at Mr. McMahon's request, what he told us is that
9 these were banking records that were printed out by their banks
10 during the course of this litigation. That prompted an inquiry
11 from us.

12 If that is the case, then digital files have existed
13 during the course of this litigation. Has anyone gone and
14 asked them to print it again so that we can have a legible copy
15 or to give us the digital files? Mr. al-Radhi said we've never
16 asked them.

17 So, the first representation was that we've had
18 checked, it doesn't exist. The second representation is no one
19 ever asked. It's just difficult for us to figure out what the
20 actual playing field is.

21 THE COURT: It seems to me that there is an obligation
22 to produce records not just in the possession of a party but
23 those that are in their custody or control. To the extent that
24 there are electronic records or files that are available from
25 the banks, those have to be requested in a timely fashion and

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1 produced.

2 It also seems to me that the request, unless Mr.
3 Carter tells me otherwise, extends to each branch of the
4 organization. And to the extent that there are nonduplicative
5 files in the branches, those have to be produced, whether it's
6 burdensome or not.

7 This whole case is about money being diverted toward
8 terrorist goals. As I understand it, the lion's share of the
9 effort is to see where money went. So the notion that this is
10 a lot of paper or bytes of information and therefore
11 burdensome, Mr. McMahon, doesn't really resonate to be me.

12 MR. McMAHON: OK, your Honor. I went back and tried
13 to find the reference to the banking records. That's in
14 paragraph 22, I guess, of Mr. al-Radhi's affidavit. My team
15 has also inquired of the al-Radhi bank if they have a digital
16 record of financial banking transactions, and they have stated
17 such inquiries should be requested to the head office and it
18 might take six months, and we are in the process of doing that
19 accordingly.

20 THE COURT: I assume if you had a large number of
21 branches, there is also a fairly large number of banks. What
22 is required here is not one request to one bank but, to the
23 extent that records don't exist in the branches themselves,
24 many requests to many banks.

25 While I said that I'm certainly at this stage not

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1 going to grant dispositive sanctions, at some point Mr.
2 al-Radhi or somebody else, as a 30(b)(6) witness, is going to
3 testify as to the efforts that these defendants made in
4 response to these requests.

5 Except to the extent that the two sides can agree that
6 some branch office is not relevant, if each branch office is
7 not queried and the documents from that branch produced, as far
8 as I'm concerned that will have been an inadequate search and
9 may lead to dispositive sanctions.

10 MR. McMAHON: I hear and appreciate that, your Honor.

11 MR. CARTER: Your Honor, we focused a lot during the
12 discussion today on the financial records and bank statements,
13 but there were a number of other categories.

14 THE COURT: I had written down, just on the April 12th
15 order, I was going to focus on 1, 3, 4, 6, and 8. We don't
16 have time to go through each one. I know 2 is important to
17 you, but you seemed to get a list of orphans, so I skipped that
18 one.

19 3 relates to the annual constituent council meetings
20 where it would appear that there should be centrally located
21 files. To the extent that there is something from the
22 Philippines' office, as an example, that the main office
23 doesn't have, if the Philippines office has it, it needs to be
24 produced from that office.

25 I guess 4 is similar, although I would imagine Mr.

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